

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IRON WORKERS LOCAL UNION
No. 25, *et al.*,

Case No. 08-11414

Plaintiff,

Marianne O. Battani
United States District Judge

vs.

STEEL ENTERPRISES, INC.,

Michael Hluchaniuk
United States Magistrate Judge

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL AND
HOLDING PLAINTIFF'S MOTION FOR SANCTIONS IN ABEYANCE**

On April 2, 2008, plaintiff filed a complaint against defendants seeking to enforce a grievance decision. (Dkt. 1). On May 27, 2008, District Judge Marianne O. Battani issued a scheduling order with a discovery cut-off date of July 30, 2008. (Dkt. 8). The parties filed a stipulation extending the scheduling order deadlines, which was entered by Judge Battani on July 31, 2008. (Dkt. 10). On August 25, 2008, plaintiff filed a motion to compel production of documents. (Dkt. 11). This motion was referred to the undersigned for hearing and decision by Judge Battani. (Dkt. 12).

On September 10, 2008, the undersigned issued an Order setting a hearing for September 22, 2008 and also requiring the parties to submit a joint statement of resolved and unresolved issues by September 18, 2008. (Dkt. 14). Plaintiff filed a statement of resolved and unresolved issues on September 19, 2008. (Dkt. 15). Defendant neither answered the motion to compel nor participated in the joint statement.

During the hearing on September 22, 2008, the Court questioned defendant's counsel regarding his failure to respond to either the motion or the Court's order regarding the joint statement. Defendant's counsel claimed that he had no notice of the motion to compel or the hearing set by the Court, asserting that some technical error must have occurred regarding the notices of electronic filing sent through the Court's electronic filing system.

The Court finds defendant's counsel's excuses unavailing in light of several undisputed facts: (1) the parties stipulated to extend discovery to give defendants additional time to obtain the information sought in the discovery requests and thus, defendants' counsel was certainly aware of the dispute generally; (2) plaintiff sent a letter to defendants' counsel on September 12, 2008 via facsimile regarding the pending motion, which was 10 days before the hearing in this matter, giving defendant's counsel ample time to look at the Court's docket in this case, file a late

response, participate in the joint statement, or request other relief from the Court; (3) the Court has confirmed through its electronic filing system that all notices of electronic filing pertaining to plaintiff's motion to compel were successfully delivered to defendants' counsel at the email address on file with the Court, but such notices were not opened. Based on the foregoing, the Court declines to give defendant's counsel's position any credence.

Thus, as stated at the hearing, the Court **GRANTS** plaintiff's motion to compel, and directs defendant to provide full and complete answers to plaintiff's discovery requests, without objection or limitation, within 14 days of entry of this Order. Further, the Court invites plaintiff's counsel to submit an itemized statement of costs and fees associated with bringing this motion for further review by the Court. Plaintiff's request for costs and attorney fees pursuant to Fed.R.Civ.P. 37(a)(4)(A) is held in **ABEYANCE** pending the Court's receipt of plaintiff's itemization, which must be filed by **October 6, 2008**. Defendant will have 14 days thereafter to respond

IT IS SO ORDERED.

The parties to this action may object to and seek review of this Order, but are required to file any objections within 10 days of service hereof as provided for in 28 U.S.C. § 636(b)(1) and Local Rule 72.1(d)(2). A party may not thereafter

assign as error any defect in this Order to which timely objection was not made.

Fed.R.Civ.P. 72(a). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. Pursuant to Local Rule 72.1(d)(2), any objection must be served on this Magistrate Judge.

Date: September 25, 2008

s/Michael Hluchaniuk
Michael Hluchaniuk
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification to the following: David A. Monroe, David R. Radtke, and Patrick J. Rorai, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: not applicable.

s/Tammy Hallwood
Deputy Clerk
U.S. District Court
600 Church Street
Flint, MI 48502
(810) 341-7850
tammy_hallwood@mied.uscourts.gov